



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

MAR 13 2014

REPLY TO THE ATTENTION OF:

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Greg Anderson
Anderson Henderson, LLC
7750 Clayton Road, Suite 102
St. Louis, Missouri 63117

Re: Administrative Order EPA-5-14-113(a)-IL-05

Dear Mr. Anderson,

Enclosed is an executed original of the Administrative Consent Order regarding the above captioned case for your client. If you have any questions about the Order, please contact me at (312) 886-3850.

Sincerely,

A handwritten signature in black ink, appearing to read "Nathan A. Frank".

Nathan A. Frank, P.E.
Chief
Air Enforcement and Compliance Assurance Section (IL/IN)

Enclosure:

cc: Regional Hearing Clerk, E-19J
Jose C. de Leon, C-14J
Katharine Owens, AE-17J
Eric Jones, IEPA

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

In the Matter of:)	EPA-5-14-113(a)-IL-05
)	
Top Metal Buyers, Inc.)	Proceeding Under Sections
E. St. Louis, Illinois)	113(a)(3) and 114(a)(1)
)	of the Clean Air Act,
)	42 U.S.C. §§ 7413(a)(3) and 7414(a)(1)

Administrative Consent Order

1. The Director of the Air and Radiation Division (Director), U.S. Environmental Protection Agency, Region 5 (EPA), is entering into this Administrative Consent Order (Order) with Top Metal Buyers, Inc. (Top Metal), 808 Walnut Street, East St. Louis, Illinois, under Sections 113(a)(3) and 114(a)(1) of the Clean Air Act (Act), 42 U.S.C. §§ 7413(a)(3) and 7414(a)(1).

I. Statutory and Regulatory Background

2. Section 113(a)(3)(B) of the Act, 42 U.S.C. § 7413(a)(3)(B), authorizes the Administrator of EPA to issue an order requiring compliance with Subchapter VI of the Act to any person who has violated or is violating any requirement of Subchapter VI. The Administrator of EPA has delegated her order authority to the Regional Administrator of EPA, Region 5 pursuant to EPA Headquarters Delegation 7-6-A. The Regional Administrator of EPA, Region 5, has delegated her order authority to the Director of the Air and Radiation Division, pursuant to EPA Region 5 Delegation 7-6-A.

3. The Administrator of EPA may require any person who owns or operates an emission source to make reports and provide information required by the Administrator under Section 114(a)(1) of the Act, 42 U.S.C. § 7414(a)(1). The

Administrator of EPA has delegated her information gathering authority to the Regional Administrator of EPA, Region 5 pursuant to EPA Headquarters Delegation 7-8. The Regional Administrator of EPA, Region 5, has delegated her information gathering authority to the Director pursuant to EPA Region 5 Delegation 7-8.

4. Subchapter VI of the Act, 42 U.S.C. § 7671, *et seq.* provides for the protection of stratospheric ozone. Section 608(b) of the Act, 42 U.S.C. § 7671g(b) provides EPA with the authority to regulate the safe disposal of class I and II substances. Class I and II substances include refrigerants containing chlorofluorocarbons (CFCs) and hydrochlorofluorocarbons (HCFCs). EPA promulgated such regulations covering the safe disposal of CFCs and HCFCs from small appliances and motor vehicle air conditioners at 58 Fed. Reg. 28660 (May 14, 1993). These regulations for protection of the stratospheric ozone, recycling and emissions reduction are found in 40 C.F.R. Part 82, Subpart F.

5. Effective July 13, 1993, persons who take the final step in the disposal process (including but not limited to scrap recyclers) of small appliances and motor vehicle air conditioners (MVACs) must either recover the refrigerant in accordance with specific procedures or verify with signed statements that the refrigerant was properly recovered prior to receipt of the small appliance or MVAC. See 40 C.F.R. § 82.156(f). If verification statements are used then the scrap recycler must notify the suppliers of the small appliance or MVAC of the need to properly recover the refrigerant. See 40 C.F.R. § 82.156(f)(3). The scrap recycler must keep verification statements on-site for a minimum of three years. See 40 C.F.R. § 82.166(i) and (m).

6. EPA's regulations for the protection of the stratospheric ozone, recycling and emissions reduction define a "small appliance" as any appliance that is fully manufactured, charged, and hermetically sealed in a factory with five pounds or less of a class I or class II substance used as a refrigerant, including, but not limited to, refrigerators and freezers (designed for home, commercial, or consumer use), medical or industrial research refrigeration equipment, room air conditioners (including window air conditioners and packaged terminal air heat pumps), dehumidifiers, under the counter ice makers, vending machines, and drinking water coolers. See 40 C.F.R. § 82.152.

7. EPA's regulations for the protection of stratospheric ozone, recycling and emissions reduction define motor vehicle air conditioners (MVACs) as mechanical vapor compression refrigeration equipment used to cool the driver's or passenger's compartment of any motor vehicle. See 40 C.F.R. §§ 82.32 and 82.152.

II. Findings

8. Top Metal owns and operates a scrap metal recycling facility at 808 Walnut Street, East St. Louis, Illinois (the Facility).

9. Top Metal is a corporation organized and doing business in Illinois.

10. Top Metal is a "person," as defined by 40 C.F.R. § 82.152.

11. Top Metal is a person who takes the final step in the disposal process of small appliances and is subject to the requirements of 40 C.F.R. Part 82, Subpart F.

12. At the Facility, Top Metal has accepted small appliances and MVACs without either recovering refrigerant or obtaining verification statements that meet the requirements of 40 C.F.R. § 82.156(f).

13. On March 8, 2013, EPA issued to Top Metal a Finding of Violation alleging that Top Metal has violated 40 C.F.R. § 82.156(f), because it neither recovered refrigerant from small appliances and MVACs nor obtained proper verification statements before accepting small appliances and MVACs.

14. On April 3, 2013, Top Metal conferred with EPA concerning the violations referenced in paragraph 12.

III. Compliance Program

15. Top Metal must comply with 40 C.F.R. Part 82, Subpart F. Additionally, for any small appliance or MVAC that it receives at the Facility, Top Metal must take the actions and maintain compliance as specified in paragraphs 16 through 23, below, for two years after the effective date of this Order.

16. Top Metal must not accept small appliances or MVACs with cut or dismantled refrigerant lines if it knows or has reason to know that the refrigerant has not been properly recovered in accordance with 40 C.F.R. § 82.156(g) and (h).

17. Top Metal must not accept small appliances or MVACs with cut or dismantled refrigerant lines unless its supplier can certify, using the verification statement included as Attachment 1 to this Order, that all refrigerant that had not leaked previously has been properly recovered. For suppliers with whom Top Metal has had a long-standing business relationship, this requirement may be satisfied by Top Metal entering into the contract included as Attachment 2 to this Order.

18. Top Metal may accept small appliances or MVACs with intact refrigerant lines provided it uses refrigerant recovery equipment as described in paragraphs 22-23, below, to remove any remaining refrigerant.

19. Top Metal must notify its suppliers in writing that it will not accept small appliances or MVACs with cut or dismantled refrigerant lines, unless the suppliers can certify that the refrigerant was properly recovered prior to cutting or dismantling the refrigerant lines using the verification statement included as Attachment 1 to this Order or the contract included as Attachment 2 to this Order.

20. Top Metal must notify its suppliers in writing that it will provide refrigerant recovery services at no additional cost or reduction in the value of the scrap.

21. Top Metal may satisfy the notice requirements of paragraphs 19 and 20 with a warning sign consistent with 40 C.F.R. § 82.156(f)(3) that is prominently displayed at its weigh station during the period of time that this Order is in effect.

22. Top Metal must use the equipment that it previously purchased to recover refrigerant from small appliances and MVACs, or contract the services of a trained individual to recover refrigerant from small appliances and MVACs. Top Metal will ensure that the individual using this equipment is properly trained.

23. Top Metal must use the refrigerant recovery log included as Attachment 3 to this Order. Top Metal must retain copies of receipts for all refrigerant it collects and sends to any other companies for reclamation. Top Metal must also document the small appliances it rejects, the date the appliance was rejected, and the reason for rejecting the item(s).

24. Within six months after the effective date of this Order and at one year after the effective date of this Order, Top Metal must submit to EPA proof of its compliance with the notice requirements of paragraphs 19 and 20, and that it is using the

equipment with an individual trained in recovering refrigerant as required by paragraph

22.

25. Within six months after the effective date of this Order and at one year after the effective date of this Order, Top Metal must submit to EPA copies of the following: all signed verification statements, all signed contracts and all refrigerant recovery logs and other information required by paragraph 23, above.

26. Top Metal must send all reports required by this Order to:

Attention: Compliance Tracker (AE-17J)
Air Enforcement and Compliance Assurance Branch
EPA, Region 5
77 West Jackson
Chicago, Illinois 60604

IV. General Provisions

27. Top Metal agrees to the terms of this Order.

28. Top Metal waives all remedies, claims for relief and otherwise available rights to judicial or administrative review that Top Metal may have with respect to any issue of fact or law set forth in this Order, including any right of judicial review under Section 307(b) of the Act.

29. This Order does not affect Top Metal's responsibility to comply with other federal, state, and local laws.

30. This Order does not restrict EPA's authority to enforce any requirement of the Act or its implementing regulations.

31. Failure to comply with this Order may subject Top Metal to penalties of up to \$37,500 per day for each violation under Section 113 of the Act, 42 U.S.C. § 7413, and 40 C.F.R. Part 19.

32. Top Metal may assert a claim of business confidentiality under 40 C.F.R. Part 2, Subpart B, for any portion of the information it submits to EPA. Information subject to a business confidentiality claim is available to the public only to the extent allowed by 40 C.F.R. Part 2, Subpart B. If Top Metal fails to assert a business confidentiality claim, EPA may make all submitted information available, without further notice, to any member of the public who requests it. Emission data provided under Section 114 of the Act, 42 U.S.C. § 7414, is not entitled to confidential treatment under 40 C.F.R. Part 2, Subpart B. "Emission data" is defined at 40 C.F.R. § 2.301.

33. This Order is not subject to the Paperwork Reduction Act, 44 U.S.C. § 3501 *et seq.*, because it seeks collection of information by an agency from specific individuals or entities as part of an administrative action or investigation. To aid in our electronic record keeping efforts, please provide your response(s) to this Order without staples. Paper clips, binder clips, and 3-ring binders are acceptable.

34. The terms of this Order are binding on Top Metal, its assignees, and successors. Top Metal must give notice of this Order to any successors in interest prior to transferring ownership and must simultaneously verify to EPA that it has given the notice.

35. EPA may use any information submitted under this Order in an administrative, civil, judicial, or criminal action.

36. This Order is effective on the date of signature by the Director. This Order will terminate two years from the effective date, provided that Top Metal has complied with all terms of the Order throughout its duration. Thereafter, Top Metal shall continue to comply with 40 C.F.R. Part 82, Subpart F.

37. Each person signing this Order certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.
38. Each party agrees to pay its own costs and attorneys' fees in this action.
39. This Order constitutes the entire agreement between the parties.

AGREED AS STATED ABOVE:

Top Metal Buyers, Inc.

By: Brett Nickel

Date: 3-7-2014

Name: Brett Nickel

Title: COO

AGREED AND SO ORDERED:

U.S. Environmental Protection Agency

3/20/14
Date

George T. Czerniak
George T. Czerniak
Director
Air and Radiation Division

TOP METAL BUYERS

808 Walnut Avenue
East St. Louis, IL. 62201

VERIFICATION OF REFRIGERANT REMOVAL

I certify that all refrigerant and substitutes (including but not limited to chlorofluorocarbons (CFCs) and hydrochlorofluorocarbons (HCFCs) as defined in Section 608 of the Clean Air Act Amendments and 40 CFR Part 82) that have not leaked previously have been recovered in accordance with the federal regulations on refrigerant recycling at 40 C.F.R. Part 82, Subpart F, from the appliances delivered under this sale.

The refrigerant has been recovered as follows:

Name of person
recovering refrigerant: _____

Address of person
recovering refrigerant: _____

Date refrigerant recovered: _____

Seller's Signature

Seller's name (print)

Date

TOP METAL BUYERS

808 Walnut Avenue
East St. Louis, IL. 62201

Refrigerant Recovery Contract

I hereby certify and agree that I shall be responsible for properly recovering or ensuring the proper recovery of any refrigerants (including Freon) prior to delivering any appliances and vehicle air conditioning systems to Top Metal Buyers, Inc., East St. Louis, Illinois. I understand that this contract is required by EPA regulations, found at 40 C.F.R §82.156.

Company Name

Company Address

Company Representative – Print Name

Top Metal Buyers, Inc. Representative – Print Name

Signature

Date

Signature

Date

East St. Louis, IL. 62201

[illegible]

CERTIFICATE OF MAILING

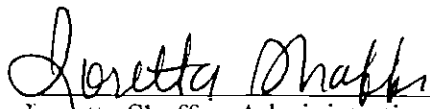
I, Loretta Shaffer, certify that I sent the Administrative Consent Order, EPA-5-14-113(a)-IL-05, by certified mail, return receipt requested, to:

Greg Anderson
Anderson Henderson, LLC
7750 Clayton Road, Suite 102
St. Louis, Missouri 63117

I also certify that I sent a copy of the Administrative Consent Order, EPA-5-14-113(a)-IL-05, by first-class mail to:

Eric Jones, Acting Manager
Bureau of Air, Compliance Section
Illinois Environmental Protection Agency
P.O. Box 19506
Springfield, Illinois 62794

On the 11 day of April 2014.


Loretta Shaffer, Administrative Program Assistant
AECAB, PAS

CERTIFIED MAIL RECEIPT
NUMBER:

70091680 0000 7676 2564